

Remarks

This Amendment is in response to the Office Action dated **September 3, 2008**.

Rejections

35 U.S.C. §112

Claim 19 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is asserted in the Office Action that:

Claim 19 provides for the use of mill agglomerate, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass.

Applicants have canceled claim 19 and has added new claim 20 which is directed to an article of manufacture. Claim 20 recites the features of claim 19 as filed. No new matter has been added.

Applicants respectfully request withdrawal of this rejection.

35 U.S.C. §101

Claim 19 is rejected under 35 U.S.C. §101. It is asserted in the Office Action that "... because the claimed recitation of a use, without selling forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. §101" Office Action, page 2, no. 3.

Claim 19 has been canceled.

New claim 20 has been added. Claim 20 is directed to an article of manufacture

and recites the features of claim 19. No new matter has been added.

Applicants respectfully request withdrawal of this rejection.

Double Patenting

Claims 10-18 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 8-19 of copending Application No. 10/564216.

A terminal disclaimer, disclaiming the terminal part of any patent granted on the present application which would extend beyond the term of Application No. 10/564216 has been enclosed herewith.

35 U.S.C. §102(b)

Claims 1-19 have been rejected under 35 U.S.C. §102(b) as being anticipated by EPA'295. See EPA'295 abstract, pages 2, 4, 7, 8, 11.

Applicants disagree.

However, for purposes of clarification only, independent claim 1 has been amended to clarify that the plate of wood material is compressed to a panel by a heat compression process wherein wood chips or wood fibres are mixed with a milled or fibrillated agglomerate of mixed synthetics of waste material from waste removal before compression of the panel. Other features are recited.

The agglomeration is formed as follows:

[0010] A usual processing of the mentioned mixed plastics is the so-called agglomerating. Disintegrated sheets are heated by friction by stirring in a stirrer so that the disintegrated particles begin to melt and become fused. Cold water is

sprayed onto the heated agglomerate in intervals so that a portion of organic contents escapes with the water vapor. Contemporarily, the melted sheets cool down and agglomerate to flowable granular structures. The typical product of transportable classified fraction of mixed plastics, predominantly sheet remainder, thus is the agglomerate. Agglomerates of mixed plastics have normally a bulk density of 320 kg/m.³ and can be well-transported.

Applicants submit that EPA '295, on the other hand, discloses "... immersing the material to be ground in a cryogenic fluid to render the material brittle and then feeding the so-treated material to a cryogenic impact mill to achieve the necessary degree of comminution." See page 4, line 38 to page 5, lines 1-3.

Furthermore, it is clear from the disclosure of EPA '295 that it is undesirable to melt the plastic due to the tendency to clog the grinding apparatuses. See page 4, lines 34-38.

The particles are then coated with an organic polyisocyanate binder and formed into boards. See page 5, lines 19-22.

Clearly, the resultant particles disclosed for use in EPA '295 are not an agglomerate of mixed synthetics as recited in claim 1. The resultant product will be different using agglomerated particles of mixed synthetics as opposed to non-agglomerated particles.

Claim 1 is not anticipated by EPA '295. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claims 2-9 depend from claim 1 and are not anticipated by claim 1 for at least the reasons that claim 1 is not anticipated by claim 1.

Independent claim 10 is directed to method for the manufacture of a wood flake panel wherein an agglomerate of mixed plastics from waste removal is milled and mixed with

wood flakes approx. of the same particle size.

Claim 10, and claims 11-18 which depend therefrom, are also not anticipated by EPA '295 for at least the reasons that claim 1 is not anticipated by EPA '295.

Applicants respectfully request withdrawal of the rejection of claims 1-18 35 under 35 U.S.C. §102(b) as being anticipated by EPA'295.

New claim 20 is patentably distinct over the art of record.

CONCLUSION

Claims 1-18 and 20 are pending in the application. Applicant has addressed each of the issues presented in the Office Action. Based on the foregoing, Applicant respectfully requests reconsideration and an early allowance of the claims as presented. Should any issues remain, the attorney of record may be reached at (952)563-3011 to expedite prosecution of this application.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: December 3, 2008

By: /Lisa Ryan-Lindquist/

Lisa R. Lindquist
Registration No.: 43071

6640 Shady Oak Dr., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

f:\wpwork\lr\13037us01_amd_20081201.doc